

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-220078

**DATE:** December 20, 1985

**MATTER OF:** Beech Aerospace Services, Inc.

**DIGEST:**

1. Protest of alleged improprieties in solicitation for two-step sealed bidding is untimely where alleged improprieties were apparent prior to bid opening but the protest was filed subsequent to bid opening. Untimely filed protest will not be considered under the significant issues exception to GAO's timeliness rules where issues have been previously considered by GAO.
2. Grounds of protest which were not accompanied by any factual details when protest was initially presented are dismissed. GAO Bid Protest Regulations provide in part that protests filed with GAO must set forth a detailed statement of the legal and factual grounds of protest including copies of relevant documents.
3. New grounds of protest initially presented subsequent to GAO's receipt of agency report on the protest are dismissed as untimely. Where a protester initially files a timely protest and later supplements it with new and independent grounds for protest, the later-raised allegations must independently satisfy GAO's timeliness requirements. GAO Bid Protest Regulations do not contemplate the piecemeal presentation of arguments or grounds for protests.
4. Protest alleging that solicitation resulted in a "buy-in" by awardee is dismissed, since the possibility of a "buy-in" is not illegal and does not provide a basis upon which an award may be challenged.

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Beech Aerospace Services, Inc. (Beech), protests award to Dynalelectron Corporation (Dynalelectron) under solicitation No. N68520-85-B-9076, an invitation for two-step sealed bidding, issued by the Department of the Navy for the procurement of maintenance and material support for the Navy's T-34C and T-44A aircraft. Beech, the incumbent contractor under the prior contract for these services, requests that the award under the solicitation be canceled and that the procurement be resolicited on the basis that the solicitation's requirements for engine overhaul were confusing and, therefore, the solicitation should have been amended to incorporate clarifying questions and written answers provided by the contracting officer to the bidders. In addition, the protester contends that the price evaluation criteria of the solicitation did not ensure an accurate and fair determination of the lowest overall bid price. The protester also alleges that the Navy's withholding of "acquisition procedures" from the terms of the solicitation has resulted in a situation where a "buy-in" apparently occurred.

The protest is dismissed.

Under the two-step sealed bidding method of procurement, the first step consists of the request for the submission, evaluation and (if necessary) discussion of a technical proposal. No pricing is involved. In the second step, sealed-price bids are invited from those firms which submitted acceptable technical proposals in step one. See Federal Acquisition Regulation, § 14.501, Federal Acquisition Circular No. 84-5, April 1, 1985.

The Navy advises that the solicitation was issued on April 26, 1985, to 38 potential offerors and that proposals in step one were received from seven firms. The agency determined that all seven firms would remain in the competition for step two, and all seven firms submitted bids by the September 3 bid opening date. Dynalelectron submitted the low bid and, therefore, was awarded the contract on September 13. On September 16, Beech filed its protest in our Office. By letter dated September 25, 1985, the Navy advised our Office that the head of the contracting activity has determined that the continued performance of the contract awarded to Dynalelectron is in the best interests of the United States notwithstanding the protest. See 31 U.S.C. § 3553(d)(2) (West Supp. 1985).

The Navy reports that during the solicitation process, it received and answered a total of 165 questions from offerors and that all questions and answers were provided in writing to all offerors. Beech contends that the solicitation's provisions were confusing with regard to the requirements for engine overhaul and that clarifying questions and answers provided by the contracting officer relating to the requirements for engine overhaul of the aircraft should have been incorporated into the bid solicitation by amendment. Beech notes that the confusion regarding engine overhaul was evidenced by the several questions which had been submitted by bidders prior to the submission of bids. Improprieties apparent under step two of a two-step procurement must be protested prior to the time set for the opening of bids. See GEO-CON, Inc., B-214503, July 3, 1984, 84-2 C.P.D. ¶ 13; 4 C.F.R. § 21.2(a)(1) (1985). Since Beech's protest of the allegedly "confusing" provisions relating to engine overhaul was not submitted to our Office until September 16--subsequent to the September 3 bid opening--this protest issue is untimely.

Another contention raised by the protester is that the price evaluation criteria set forth in section M-4 of the solicitation did not ensure an accurate and fair determination of the lowest overall price in step two of the procurement. We note that the protester does not contend that evaluation of bid prices was not in accordance with the price criteria set out in the solicitation. Since the protest is based on the price criteria as set out in the solicitation and not on the agency's failure to evaluate the bids received on the basis of the criteria in the solicitation, this protest issue is untimely because it was filed after the bid opening date. See 4 C.F.R. § 21.2(a)(1), supra.

The protester contends that even if the above grounds of protest regarding engine overhaul and the price evaluation criteria are untimely, such protest issues should be considered by our Office under the "significant issues" exception to our timeliness rules. See 4 C.F.R. § 21.2(c) (1985). Under the significant issue exception, we will only consider untimely protests when the issue or issues raised are of widespread significance to the procurement community and have not been previously considered. Knox Manufacturing Co.--Request for Reconsideration, B-218132, Mar. 6, 1985, 85-1 C.P.D. ¶ 281. We construe this exception strictly and use it sparingly to prevent our timeliness rules from being

rendered meaningless. WAECO Power, Inc., B-218036, Feb. 13, 1985, 85-1 C.P.D. ¶ 224. Neither of the above two grounds for protest falls within the exception since the issues of ambiguities in a solicitation and alleged improprieties in a solicitation's price evaluation criteria have been the subject of prior decisions of this Office. With regard to the former issue, see IBI Security Service, Inc., B-217446, June 27, 1985, 85-1 C.P.D. ¶ 732, and Cincinnati Bell Telephone Co., 62 Comp. Gen. 124 (1983), 83-1 C.P.D. ¶ 41. With regard to the latter issue, see AC, Inc., B-215993, Dec. 31, 1984, 85-1 C.P.D. ¶ 4, and Williams Elevator Co., B-210049, Sept. 15, 1983, 83-2 C.P.D. ¶ 327.

In its September 16 protest, Beech also alleges that the contract as awarded differs from the solicitation and that the Navy withheld available information regarding cost of material and procedures that affected the ability of bidders to respond with their best offers. The protester also alleges that certain "acquisition procedures" that were withheld from the bidders affected the contract cost and later were added into the contract after award.

In its protest, Beech provided no details whatsoever concerning these grounds for protest. Furthermore, the Navy advises that Beech had not filed a prior protest with it concerning this procurement and that there had been no prior discussion between the protester and agency representatives concerning the matters under protest. Our Bid Protest Regulations provide in part that protests filed with this Office must set forth a detailed statement of the legal and factual grounds of protests, including copies of relevant documents. See 4 C.F.R. § 21.1(b)(4) (1985). This filing requirement was necessitated as a practical matter by provisions in the Competition in Contracting Act of 1984, which require this Office to notify the contracting agency of a protest within 1 day after its filing and further require that the agency generally furnish this Office with a report responding to the protest within 25 working days after such notice. 31 U.S.C. § 3553(b) (West Supp. 1985). See The Pangborn Company--Reconsideration, B-218087.3, Mar. 11, 1985, 85-1 C.P.D. ¶ 298. Since Beech's protest letter did not provide any details of the factual basis for its allegations that the Navy withheld from the solicitation material information on costs and "acquisition procedures," such grounds for protest are properly for dismissal. We note that at the conference on this protest and in its subsequent written comments, Beech provided additional

details on these allegations. However, such information furnished on a piecemeal basis does not satisfy the protester's responsibility to provide a detailed statement on the factual grounds of its protest. See A&M Instrument, Inc.-- Request for Reconsideration, B-220167.2, Sept. 30, 1985, 85-2 C.P.D. 359; Allied Bendix Aerospace, B-218869.2, June 6, 1985, 85-1 C.P.D. ¶ 651.

At the conference and in its subsequent written comments, the protester has made a number of specific allegations concerning the impropriety of the solicitation and price evaluation process which are not set forth in its initial protest. These allegations pertain to Beech's contention that the solicitation and evaluation process do not ensure that the government's minimum needs are met by the lowest responsible bidder since the solicitation both overstates and understates the actual needs of the government under the procurement. For example, Beech contends that the bid schedule for aircraft parts set forth in attachment 1, annex 6, of the solicitation grossly overstates the government's actual needs for engine "vane rings" under the procurement; Beech bases this argument upon its experience with certain aircraft parts gained as the incumbent under earlier contracts. As another example of an allegation not raised until the bid protest conference and the subsequent comments to our Office, Beech states that by message dated September 6, which it received on September 8, the Navy advised the contracting activity that National Stock Number (NSN) material would be provided by the contractor. Beech advises that attachment 1, annex 7, to the solicitation had provided that such NSN material would be furnished by the government and that the change in policy as a result of this message would result in the addition of \$11 million of contractor-provided material which was not set forth in the solicitation and, thus, was not a part of the price evaluation formula.

These and the other new allegations or grounds for protest which were first presented either at the conference on the protest or in Beech's subsequent comments are untimely. Where a protester files a timely protest and later supplements it with new and independent grounds for protest, the later-raised allegations must independently satisfy the timeliness requirements. Our Bid Protest Regulations do not contemplate the unwarranted piecemeal

development of protests. See Baker Company, Inc., B-216220, Mar. 1, 1985, 85-1 C.P.D. ¶ 254. Furthermore, our regulations do not contemplate a piecemeal presentation of arguments or information even where they relate to the original grounds for protest. See Allied Bendix Aerospace, B-218869.2, supra, 85-1 C.P.D. ¶ 651 at 2. Since the new allegations and grounds of protest first presented by Beech at either the conference on the protest or in its subsequent written comments to our Office are based either on alleged improprieties apparent on the face of the solicitation or on information known to the protester at the time its initial protest was filed, such allegations and grounds for protest are dismissed as untimely. See 4 C.F.R. §§ 21.2(a)(1) and (2) (1985). See A&M Instrument, Inc.--Request for Reconsideration, B-220167.2, supra.

Lastly, Beech alleges in its protest that the omission of "acquisition procedures" from the solicitation as alleged above created a situation under which an intentional "buy-in and recover later" bid apparently occurred. The possibility of a "buy-in" is not illegal and does not provide a basis upon which an award may be challenged. Seaton Van Lines, Inc., B-217298, Jan. 8, 1985, 85-1 C.P.D. ¶ 26. We note that contracting officers, however, are required to take appropriate action to ensure that losses resulting from below-cost bidding or a "buy-in" are not recovered through change orders or otherwise. Command Systems, B-218093, Feb. 15, 1985, 85-1 C.P.D. ¶ 205.

In accordance with the above, the protest is dismissed.



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